



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0337; FRL-9936-05-Region 4]**

**Approval and Promulgation of Implementation Plans; Florida;**

**Regional Haze Plan Amendment – Lakeland Electric C.D. McIntosh**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of the State of Florida's March 10, 2015, State Implementation Plan (SIP) revision, submitted by the Florida Department of Environmental Protection (FDEP). This submittal fulfills Florida's commitment to EPA to provide a regional haze SIP revision with a Best Available Retrofit Technology (BART) nitrogen oxides (NO<sub>x</sub>) emissions limit for Unit 1 at the Lakeland Electric - C.D. McIntosh Power Plant (McIntosh) reflecting best operating practices for good combustion. States are required to address the BART provisions of the Clean Air Act (CAA or Act) and EPA's regional haze regulations as part of a program to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program") and to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. In

this action, EPA is approving the BART NO<sub>x</sub> emissions limit for Unit 1 at McIntosh into the Florida SIP.

**DATES:** This rule is effective [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0337. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW,

Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached by phone at (404) 562-9031 or via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On December 10, 2012, EPA proposed to approve the BART and reasonable progress determinations for a number of EGUs in Florida as part of Florida's regional haze SIP. *See* 77 FR 73369. In that action, EPA proposed approval of Florida's BART determination for emissions Units 1 and 2 at McIntosh found subject to BART. On August 29, 2013, EPA issued a final, full approval of Florida's regional haze SIP. *See* 78 FR 53250. In that final action, EPA approved the BART determination for the McIntosh facility, including the determination that the existing level of control for NO<sub>x</sub> at Unit 1, best operating practices for good combustion, is the NO<sub>x</sub> BART control for Unit 1. *See* 78 FR 53263. As described in the August 29, 2013, final action, FDEP submitted a letter to EPA dated July 30, 2013, in which the State committed to provide EPA with a regional haze SIP revision no later than March 19, 2015, the deadline for the State's five-year regional haze periodic progress report SIP, that would include a NO<sub>x</sub> BART emissions limit for Unit 1 reflecting best operating practices for good combustion. FDEP also committed to modify the title V permit for McIntosh to include this new limit.

To fulfill its commitment in accordance with the July 30, 2013 letter, the State of Florida submitted a SIP revision dated March 10, 2015, revising the State's regional haze SIP to include a NO<sub>x</sub> BART emissions limit for McIntosh Unit 1 and a construction permit (FDEP Permit No. 1050004-034-AC) dated April 30, 2014, for Unit 1 containing this limit. The permit contains

supporting conditions (e.g., monitoring requirements) and a condition specifying a schedule for McIntosh to apply for a revision to its title V permit to reflect the new permit conditions.

In a notice of proposed rulemaking (NPR) published on August 20, 2015, EPA proposed to approve Florida's March 10, 2015, regional haze SIP revision fulfilling the State's July 20, 2013, commitment to provide EPA with a SIP revision containing a NO<sub>x</sub> BART emissions limit for McIntosh Unit 1 reflecting best operating practices for good combustion and conditions to modify the title V permit to incorporate this limit. *See* 80 FR 50591. The details of Florida's submittal and the rationale for EPA's actions are explained in the NPR. Comments on the proposed rulemaking were due on or before September 21, 2015. No adverse comments were received.

## **II. Final Action**

EPA is finalizing approval of the State of Florida's March 10, 2015, SIP revision and revising the regional haze SIP to include the NO<sub>x</sub> BART emissions limit for Unit 1 and the April 30, 2014, construction permit containing this limit. EPA is approving these changes to the Florida SIP because the submission meets the applicable regional haze requirements as set forth in the CAA and in EPA's regional haze regulations and the applicable requirements of section 110 of the CAA.

## **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

*See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 8, 2015.

Heather McTeer Toney

Regional Administrator,

Region 4.



40 CFR part 52 is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42.U.S.C. 7401 *et seq.*

**Subpart K - Florida**

2. Section 52.520(e) is amended by adding an entry for “Regional Haze Plan Amendment 3” at the end of the table to read as follows:

**§ 52.520 Identification of plan.**

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(e) \* \* \*

**EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS**

<b>Provision</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Federal Register notice</b>	<b>Explanation</b>
**	**	*	*	*
Regional Haze Plan Amendment 3	4/30/2014	[Insert date of publication in <u>Federal Register</u> ] [Insert Federal Register citation]	[Insert Federal Register citation]	Establishes NO <sub>x</sub> BART emissions limit for Unit 1 at the Lakeland Electric - C.D. McIntosh Power Plant and includes FDEP Permit No. 1050004-034-AC

